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35  
36 **UNITED STATES DISTRICT COURT**  
37 **NORTHERN DISTRICT OF CALIFORNIA**  
38 **SAN FRANCISCO DIVISION**

39 KYTCH, INC.,

40 Plaintiff,

41 v.

42 MCDONALD'S CORPORATION,

43 Defendant.

44 No. 23-CV-01998-TSH

45  
46 **STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY**  
47 **SENSITIVE CONFIDENTIAL INFORMATION**

1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public  
 4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 7 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 8 and use extends only to the limited information or items that are entitled to confidential treatment  
 9 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,  
 10 below, that this Stipulated Protective Order does not entitle them to file confidential information  
 11 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards  
 12 that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

3.1 Challenging Party: a Party or Non-Party that challenges the designation of  
 4 information or items under this Order.

3.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 4 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
 5 of Civil Procedure 26(c).

3.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
 4 well as their support staff).

3.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

3.5 Designating Party: a Party or Non-Party that designates information or items that it  
 4 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 6 CODE.”

3.6 Disclosure or Discovery Material: all items or information, regardless of the  
 4 medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
2 responses to discovery in this matter.

3           2.7     Expert: a person with specialized knowledge or experience in a matter pertinent to  
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as  
5 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
6 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or  
7 of a Party's competitor.

8           2.8       “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
9       Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
10      Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
11      less restrictive means.

12        2.9     **“HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:** extremely  
13 sensitive “Confidential Information or Items” representing computer code and associated  
14 comments and revision histories, formulas, engineering specifications, or schematics that define or  
15 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure  
16 of which to another Party or Non-Party would create a substantial risk of serious harm that could  
17 not be avoided by less restrictive means.

18           2.10    House Counsel: attorneys who are employees of a party to this action. House  
19           Counsel does not include Outside Counsel of Record or any other outside counsel.

20           2.11    Non-Party: any natural person, partnership, corporation, association, or other legal  
21           entity not named as a Party to this action.

22           2.12    Outside Counsel of Record: attorneys who are not employees of a party to this  
23           action but are retained to represent or advise a party to this action and have appeared in this action  
24           on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25           2.13    Party: any party to this action, including all of its officers, directors, employees,  
26           consultants, retained experts, and Outside Counsel of Record (and their support staffs).

## 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2       2.15 Professional Vendors: persons or entities that provide litigation support services  
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
4 organizing, storing, or retrieving data in any form or medium) and their employees and  
5 subcontractors.

6       2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
7 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

9       2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
10 Producing Party.

11       3. SCOPE

12       The protections conferred by this Stipulation and Order cover not only Protected Material  
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
16 However, the protections conferred by this Stipulation and Order do not cover the following  
17 information: (a) any information that is in the public domain at the time of disclosure to a  
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
19 result of publication not involving a violation of this Order, including becoming part of the public  
20 record through trial or otherwise; and (b) any information known to the Receiving Party prior to  
21 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained  
22 the information lawfully and under no obligation of confidentiality to the Designating Party. Any  
23 use of Protected Material at trial shall be governed by a separate agreement or order.

24       4. DURATION

25       Even after final disposition of this litigation, the confidentiality obligations imposed by this  
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
28

1 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
 2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 3 including the time limits for filing any motions or applications for extension of time pursuant to  
 4 applicable law.

5. **DESIGNATING PROTECTED MATERIAL**

6. 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
 7 or Non-Party that designates information or items for protection under this Order must take care to  
 8 limit any such designation to specific material that qualifies under the appropriate standards. To  
 9 the extent it is practical to do so, the Designating Party must designate for protection only those  
 10 parts of material, documents, items, or oral or written communications that qualify – so that other  
 11 portions of the material, documents, items, or communications for which protection is not  
 12 warranted are not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 15 unnecessarily encumber or retard the case development process or to impose unnecessary  
 16 expenses and burdens on other parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it designated  
 18 for protection do not qualify for protection at all or do not qualify for the level of protection  
 19 initially asserted, that Designating Party must promptly notify all other parties that it is  
 20 withdrawing the mistaken designation.

21 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this Order  
 22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
 23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
 24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) **for information in documentary form** (e.g., paper or electronic documents, but  
 27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

1 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 2 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected  
 3 material. If only a portion or portions of the material on a page qualifies for protection, the  
 4 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
 5 markings in the margins) and must specify, for each portion, the level of protection being asserted.

6 A Party or Non-Party that makes original documents or materials available for inspection  
 7 need not designate them for protection until after the inspecting Party has indicated which material  
 8 it would like copied and produced. During the inspection and before the designation, all of the  
 9 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
 10 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
 11 copied and produced, the Producing Party must determine which documents, or portions thereof,  
 12 qualify for protection under this Order. Then, before producing the specified documents, the  
 13 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
 14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 15 CODE) to each page that contains Protected Material. If only a portion or portions of the material  
 16 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
 17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
 18 portion, the level of protection being asserted.

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
 20 Designating Party identify on the record, before the close of the deposition, hearing, or other  
 21 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
 22 impractical to identify separately each portion of testimony that is entitled to protection and it  
 23 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
 24 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
 25 to have up to 30 days from the date the certified deposition transcript is delivered to identify the  
 26 specific portions of the testimony, by page and line number, as to which protection is sought and  
 27 to specify the level of protection being asserted. Only those portions of the testimony that are

1 appropriately designated for protection within the 30 days of the date the certified deposition  
2 transcript is delivered shall be covered by the provisions of this Stipulated Protective Order.  
3 Alternatively, a Designating Party may specify, at the deposition or up to 30 days after the  
4 certified transcript is delivered, if that period is properly invoked, that the entire transcript shall be  
5 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
7 other proceeding to include Protected Material so that the other parties can ensure that only  
8 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
9 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
10 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
11 – ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material identified before the close of deposition or  
13 delivery of the certified transcript shall have an obvious legend on the title page that the transcript  
14 contains Protected Material, and the title page shall be followed by a list of all pages (including  
15 line numbers as appropriate) that have been designated as Protected Material and the level of  
16 protection being asserted by the Designating Party. The Designating Party shall inform the court  
17 reporter of these requirements. Any transcripts for which the 30 day review period is timely  
18 invoked shall, before the expiration of the 30-day period for designation, be treated during that  
19 period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
20 in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be  
21 treated only as actually designated.

22 (c) for information produced in some form other than documentary and for any other  
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
24 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
26 SOURCE CODE”. If only a portion or portions of the information or item warrant protection, the  
27 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the

1 level of protection being asserted.

2       5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
3 designate qualified information or items does not, standing alone, waive the Designating Party's  
4 right to secure protection under this Order for such material. Upon timely correction of a  
5 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
6 in accordance with the provisions of this Order.

7       6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

8       6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
9 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
13 original designation is disclosed.

14       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
15 process by providing written notice of each designation it is challenging and describing the basis  
16 for each challenge. Categorical challenges shall not be permitted, and challenges shall be made on  
17 an individualized basis (though the parties may include duplicates or emails in a single thread as  
18 one item). To avoid ambiguity as to whether a challenge has been made, the written notice must  
19 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
20 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
21 begin the process by conferring directly (in voice to voice or video conference dialogue; other  
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
24 designation was not proper and must give the Designating Party an opportunity to review the  
25 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
26 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of  
27 the challenge process only if it has engaged in this meet and confer process first or establishes that  
28

1 the Designating Party is unwilling to participate in the meet and confer process in a timely  
2 manner.

3         6.3         Judicial Intervention. If the Parties cannot resolve a challenge without court  
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
5 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of  
6 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
7 process will not resolve their dispute, whichever is earlier. Serial or piecemeal challenges under  
8 this paragraph are discouraged, and in the event that the challenge process is being abused by any  
9 Party, the Court may, in its discretion, shift the burden to the Challenging Party to file a motion  
10 related to any future challenges. Even in the absence of abuse of the challenge process, after a  
11 Challenging Party brings five (5) unsuccessful challenges (counted by the initiation of the  
12 challenge process, not the number of documents or issues included in such challenge), the burden  
13 shall shift to the Challenging Party to file motions related to any future challenges. Each such  
14 motion must be accompanied by a competent declaration affirming that the movant has complied  
15 with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
16 Designating Party to make such a motion including the required declaration within 21 days (or 14  
17 days, if applicable) shall automatically waive the confidentiality designation for each challenged  
18 designation. In addition, the Challenging Party may file a motion challenging a confidentiality  
19 designation at any time if there is good cause for doing so, including a challenge to the designation  
20 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
21 must be accompanied by a competent declaration affirming that the movant has complied with the  
22 meet and confer requirements imposed by the preceding paragraph.

23         The burden of persuasion in any such challenge proceeding shall be on the Designating  
24 Party, regardless of who bears the burden to file a motion under this paragraph. Frivolous  
25 challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
26 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
27 Designating Party has waived the confidentiality designation by failing to file a motion to retain

1 confidentiality as described above, all parties shall continue to afford the material in question the  
2 level of protection to which it is entitled under the Producing Party's designation until the court  
3 rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
8 the categories of persons and under the conditions described in this Order. When the litigation has  
9 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in  
12 a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
14 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
15 information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
17 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
18 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is  
19 attached hereto as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
21 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
24 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
25 Agreement to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,

1 mediators, and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
2 or preparation for trial and who have signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
5 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
6 **unless otherwise agreed by the Designating Party or ordered by the court.**

7 (g) the author or recipient of a document containing the information or a custodian or other  
8 person who otherwise possessed or knew the information.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
10 “HIGHLY CONFIDENTIAL – SOURCE CODE”. Unless otherwise ordered by the court or  
11 permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
12 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
13 CONFIDENTIAL – SOURCE CODE” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
15 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
16 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
17 attached hereto as Exhibit A;

18 (b) Three Designated House Counsel of the Receiving Party (1) who has no involvement in  
19 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
20 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to  
21 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

22 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
23 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
24 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, mediators, and  
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (f) the author or recipient of a document containing the information or a custodian or other  
3 person who otherwise possessed or knew the information.

4 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” Information or Items to Designated House Counsel or Experts.

7 (a)(1) Unless otherwise ordered by the court, a Party that seeks to disclose to Designated  
8 House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to  
10 the Designating Party that (1) sets forth the full name of the Designated House Counsel, and (2)  
11 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
12 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
13 become involved, in any competitive decision-making.

14 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
15 Party, a Party that seeks to disclose to an Expert (as defined in this Order) who may serve as a  
16 witness for the Designating Party during this litigation any information or item that has been  
17 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
18 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written  
19 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
21 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
22 forth the full name of the Expert, (3) attaches a copy of the Expert’s current resume, (4) identifies  
23 the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has  
24 received compensation or funding for work in his or her areas of expertise or to whom the expert  
25 has provided professional services, including in connection with a litigation, at any time during the

1 preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case, filing date, and location  
 2 of court) any litigation in connection with which the Expert has offered expert testimony,  
 3 including through a declaration, report, or testimony at a deposition or trial, during the preceding  
 4 five years.

5 (b) A Party that makes a request and/or provides the information specified in the preceding  
 6 respective paragraphs may disclose the subject Protected Material to the identified Designated  
 7 House Counsel or Expert unless, within 7 days of delivering the request or information, the Party  
 8 receives a written objection from the Designating Party. Any such objection must set forth in  
 9 detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with the  
 11 Designating Party (through direct video conference or voice to voice dialogue) to try to resolve the  
 12 matter by agreement within seven days of the written objection. If no agreement is reached, the  
 13 Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion  
 14 as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
 15 seeking permission from the court to do so. Any such motion must describe the circumstances  
 16 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or  
 17 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
 18 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
 19 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
 20 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
 21 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
 22 disclosure.

23 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
 24 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
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26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
 27 Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality  
 28 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating  
 Party regarding any such engagement.

1 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
2 Material to its Designated House Counsel or Expert.

3 8. SOURCE CODE

4 (a) To the extent production of source code becomes necessary in this case, a  
5 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
6 if it comprises or includes confidential, proprietary or trade secret source code.

7 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"  
8 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
9 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to whom  
10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as  
11 set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

12 (c) Any source code produced in discovery shall be made available for inspection in a  
13 format through which it could be reasonably reviewed and searched during normal business hours  
14 or other mutually agreeable times at a location that is reasonably convenient for the Receiving  
15 Party and any experts to whom the source code may be disclosed. The source code shall be made  
16 available for inspection on a secured computer in a secured room without Internet access or  
17 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
18 transfer any portion of the source code onto any recordable media or recordable device. The  
19 Producing Party may visually monitor the activities of the Receiving Party's representatives  
20 during any source code review, but only to ensure that there is no unauthorized recording,  
21 copying, or transmission of the source code.

22 (d) The Receiving Party may request paper copies of limited portions of source code  
23 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
24 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing  
25 the source code other than electronically as set forth in paragraph (c) in the first instance. The  
26 Producing Party shall provide all such source code in paper form including bates numbers and the  
27 label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the

1 amount of source code requested in hard copy form pursuant to the dispute resolution procedure  
 2 and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party”  
 3 and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

4 (e) The Receiving Party shall maintain a record of any individual who has inspected  
 5 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
 6 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
 7 Party shall not create any electronic or other images of the paper copies and shall not convert any  
 8 of the information contained in the paper copies into any electronic format. The Receiving Party  
 9 shall only make additional paper copies if such additional copies are (1) necessary to prepare court  
 10 filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for  
 11 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during  
 12 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given  
 13 to or left with a court reporter or any other unauthorized individual.

14 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 15 LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation that compels  
 17 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
 18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
 19 SOURCE CODE” that Party must, unless prohibited under applicable law:

20 (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
 21 of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
 23 other litigation that some or all of the material covered by the subpoena or order is subject to this  
 24 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 26 Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
 28 or court order shall not produce any information designated in this action as “CONFIDENTIAL”

1 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
2 CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the  
3 subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The  
4 Designating Party shall bear the burden and expense of seeking protection in that court of its  
5 confidential material – and nothing in these provisions should be construed as authorizing or  
6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
8 LITIGATION

9 (a) The terms of this Order are applicable to information produced by a Non-Party in  
10 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
12 information produced by Non-Parties in connection with this litigation is protected by the  
13 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
16 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
17 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

18 1. promptly notify in writing the Requesting Party and the Non-Party that  
19 some or all of the information requested is subject to a confidentiality agreement with a Non-  
20 Party;

21 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
22 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
23 the information requested; and

24 3. make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
26 days of receiving the notice and accompanying information, the Receiving Party may produce the  
27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
28 seeks a protective order, the Receiving Party shall not produce any information in its possession or

1 control that is subject to the confidentiality agreement with the Non-Party before a determination  
2 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
3 of seeking protection in this court of its Protected Material.

4 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
6 Material to any person or in any circumstance not authorized under this Stipulated Protective  
7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
8 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
9 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
10 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

12 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
13 **MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations of the  
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
17 provision is not intended to modify the procedures established in the Stipulated Order re:  
18 Discovery of Electronically Stored Information entered into between the parties.

19 13. **MISCELLANEOUS**

20 13.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to  
21 seek its modification by the court in the future.

22 13.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective  
23 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
25 Party waives any right to object on any ground to use in evidence of any of the material covered  
26 by this Protective Order.

27 13.3 **Use of Designations as Evidence.** Designation of a document or information as  
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall not,

1 in any manner, be cited or otherwise used as evidence in connection with any dispositive motion,  
2 any hearing or trial in this or any other matter, except for a hearing related to the interpretation or  
3 enforcement of this Order.

4       13.4    Filing Protected Material. Without written permission from the Designating Party  
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
6 the public record in this action any Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
10 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
11 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
12 Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving  
13 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5 unless  
14 otherwise instructed by the court.

15       14.    FINAL DISPOSITION

16       Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
18 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
19 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
20 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
21 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
22 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected  
23 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained  
24 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any  
25 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
26 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
27 correspondence, deposition and trial exhibits, expert reports, attorney work product, and

1 consultant and expert work product, even if such materials contain Protected Material. Any such  
2 archival copies that contain or constitute Protected Material remain subject to this Protective Order  
3 as set forth in Section 4 for five years from the date of final disposition of this action.

4

5

6 **IT IS SO STIPULATED**, through Counsel of Record.

7

8 DATED: October 17, 2023

9

10 **FOR PLAINTIFF KYTCH, INC.**

11

12 /s/ Daniel P. Watkins

13 DANIEL P. WATKINS

14 MEIER WATKINS PHILLIPS PUSCH

15 Attorney for Plaintiff Kytch, Inc.

16

17 **FOR DEFENDANT MCDONALD'S CORP.**

18

19 /s/ Kristopher R. Wood

20 KRISTOPHER R. WOOD

21 ORRICK HERRINGTON & SUTCLIFFE, LLP

22 Attorney for Defendant McDonald's Corp.

23

24

25

26 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

27

28

DATED: October 18, 2023

  
THOMAS S. HIXSON  
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read and understand the Stipulated Protective Order that was issued by the United States for the Northern District of California on [date] in the case of \_\_\_\_\_ [insert of the case and the number and initials assigned to it by the court]. I agree to and to be bound by all the terms of this Stipulated Protective Order and I understand judge that failure to so comply could expose me to sanctions and punishment in the exempt. I solemnly promise that I will not disclose in any manner any information or object to this Stipulated Protective Order to any person or entity except in strict with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings  
related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

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